

CANVASSING



KANSAS

AN UPDATE ON ELECTION NEWS IN KANSAS

HAVA Planning in Full Swing

County Matching Funds Requirement

The omnibus bill passed by the legislature this year includes a HAVA matching funds proviso that county officials should note. In order for the state to receive HAVA title II funding (approximately \$7.5 million in FY 2004), a five percent match must be provided. The proviso in the omnibus bill specifies that three percent (approximately \$225,000) of the match will come from the state general fund and the remaining two percent (approximately \$150,000) will be provided by Kansas counties.

Each county's contribution will be determined using a formula which compares the county voting age population to state voting age population, with a minimum contribution of \$250. Tentative county contribution amounts were distributed at the Kansas County Clerks and Election Officials Association convention in May. The tentative amounts are a guideline for counties as they plan their 2004 budgets.

When the federal government confirms the exact amount of title II funding Kansas is eligible to receive, the Secretary of State's office will send each county a notice of payment due. In the meantime, counties owing the minimum amount of \$250 may remit payment to the secretary of state's office beginning July 1, 2003. Payments must be received by June 30, 2004.

Accessibility Grants

On Wednesday, May 21, the U.S. Department of Health and Human Services published a notice regarding administration of the grant program established by HAVA for payments to state and units of local government to assure access for individuals with disabilities. Despite earlier information, states are the only eligible applicants due to how the federal appropriations statute was drafted. States are, therefore, encouraged to work with their units of local government to meet local accessibility needs once funding is received at the state level. The Secretary of State's office plans to assess statewide accessibility needs and apply for funding by early July. Grant payments to states will be based on a voting age population formula with minimum payment of \$100,000; Kansas is eligible to receive \$110,057.

Central Voter Registration Request for Proposal

Planning for a new statewide central voter registration (CVR) system has entered a new phase. The Secretary of State's office has partnered with Jim Minihan of IMERGE Consulting to develop a Request for Proposal (RFP) for the CVR system. A vendor, who will develop and implement the CVR system, will be selected through the RFP process. We expect the

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Voter News Service Change

Voter News Service (VNS) was organized a decade ago by ABC, CBS, NBC, CNN, Fox News Channel and the Associated Press to assist them in tabulating votes on Election Day and to conduct exit polling in selected locations throughout the county.

Exit poll information is used to help project winners in individual elections and provide information on why people voted the way they did. The information provided by VNS was used by most media outlets in their election night coverage of national general elections.

Recently, VNS was disbanded due to problems associated with the 2000 presidential election as well as the inability of VNS to provide exit polling information during the 2002 general election. Many county election officers in Kansas have been contacted by VNS during election season over the years as they sought permission to conduct exit polling interviews of voters in various precincts around the state.

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KCCEOA Annual Spring Convention

The Kansas County Clerks' and Election Officials' Association (KCCEAO) held its annual spring convention at the Holiday Inn West Holidome in Manhattan, May 6 – 9, 2003. Eighty-nine of 105 counties were represented at the conference. Attendees heard presentations on personnel management, budgeting and accounting, the duties of county clerks, a report from the state Division of Property Valuation, and humorous, inspirational messages on managing crises and improving office procedures.

The traditional Thursday evening banquet featured a "Star Search" theme with a competition among the six districts of the KCCEOA.

Much of the day on Thursday, May 8, was given to Secretary of State Ron Thornburgh and his staff to update county election officers on current issues in election management and the status of implementation of the federal Help America Vote Act of 2002 (HAVA).

Brad Bryant, election director, provided a summary of elections legislation passed during the 2003 legislative session (see article on pages 4-5). Booklets containing copies of the legislation were prepared and distributed by Karen Hartenbower, Lyon County Clerk and chair of the KCCEOA election committee.

Bryan Caskey, administrative assistant in the SOS elections division, discussed the recently redesigned secretary of state Web site. Caskey also described the process for the 2003 revisions to the Kansas Election Standards, scheduled for release in July.

The afternoon session consisted of a nearly three-hour discussion of HAVA. Secretary Thornburgh gave an overview of the law and its requirements. Mindy Miller, legal associate in the elections division and HAVA project manager, discussed the time line for implementation of HAVA over the next three years, the activities of the HAVA Advisory Council, and the specifics of the state plan which will be published this summer and subsequently filed with the federal government.

Bryant explained HAVA-related legislation, including bills that passed last year, the failure of the 2003 bill to pass over a gubernatorial veto, and plans for more legislation in 2004.

New Election Information on SOS Web

As reported in the March, 2003 issue of this newsletter, in February the secretary of state unveiled a new look and functionality to its existing Web site at www.kssos.org. The new Web site was created to better assist every day users and those not familiar with our office.

A Quicklinks box on the home page provides users with a list of common functions that may be accessed directly in order to get the information quickly and efficiently. On each page a search box is available that will search and return results in three ways. It returns a list of forms, related site content, and related information from a database of agency responsibilities.

The Elections division continues to have its own section with a variety of resources. New additions since the February launch of the redesigned site include:

- a HAVA page to keep everyone up to date on the Help America Vote Act (see the Election Reform page under "Elections & Legislative")
- the Kansas Election Standards (also on the Election Reform page)
- the Legislative Directory (under Useful Links on the "Elections & Legislative" page)

We encourage everyone to review the new site, and let us know if you have any suggestions or comments.

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Ron Thornburgh**

Memorial Hall
120 SW 10th Ave.
Topeka, KS 66612-1594
(785) 296-4564

Editor
Amber M. Cunningham

Layout and Design
Amber M. Cunningham

Contributing Writers
Brad Bryant
Bryan Caskey
Mindy Miller
Amber Cunningham

If you have any suggestions or
comments about this or future
issues, please call (785) 296-4580.

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RON THORNBURGH

Kansas Secretary of State

Dear Friends:

It was good to see so many of you in Manhattan. Although I wish I could have stayed for the banquet and show that evening, I understand our office was very well represented.

I have to admit, to being a little nervous going into the meeting since we were presenting a handful of changes to our elections world. As you know, our thinking, "but we've always done it that way," runs pretty deep in some of the election processes. However, in hindsight, I now see that I forgot rule number one — Kansas election officers are the best in the nation and are ultimate professionals.

Although, HAVA presents us with a number of challenges and opportunities, I have no doubt that we will have a much better election system when we finish implementation. However, success can only be accomplished through continued and ceaseless communication between our offices. HAVA grants the state much more power and authority than ever before. Even so, I am personally committed to insuring county needs are met. Only through an equal voice in the design, build, and implementation of HAVA, will we create the best system for Kansas voters.

Your association is represented at every level of the planning process from design to education to implementation. In addition, we have also worked very hard to insure that other voices are heard as well. From users to voter registration partners, to advocacy groups, everyone will be heard. I encourage everyone to actively participate as we work through the challenges the next several years will bring. Whether that means attending meetings and seminars, or making your opinions known to your representatives on various committees, your help is not optional — we need your ideas and energy.

You and I, for whatever reason, have been chosen to implement the single greatest change to American elections since the voting rights acts of the 60s. How we wield this authority will be a defining moment in most of our careers. Our success will be defined by the next several generations of Kansans and their trust of the electoral process. I look forward to the challenge and our newly defined partnership.

Best wishes,

A handwritten signature in dark ink, appearing to read "Ron", written over a large, stylized capital letter "R".

RON THORNBURGH
Secretary of State

2003 Elections Legislation

The 2003 legislative session was a very busy one for elections legislation. There were many bills introduced that, if passed, would have greatly altered the conduct of elections. Many of the bills did not pass, but some important ones did. The Secretary of State's office and the Kansas County Clerks' and Election Officials' Association managed to get most of their bills passed. The following is a summary of the SOS and KCCEOA legislation that passed and brief summaries of other legislation affecting county election officers.

Senate Bill 102 — Ballots, Political Party Names, Presidential Primary

SB 102 was proposed by the SOS and in its final form contains three additional bills: SB 95 — SOS bill on political party names; SB 101 — SOS bill canceling the presidential preference primary; and HB 2212 — KCCEOA bill on city annexations.

a. Closing a loophole in advance voting and voting at the polling place:

It was possible under the old laws for a voter to cast two ballots, one before the election and one on Election Day, and have them both count.

Under the advance voting law, KSA 25-1122f, a person could request an advance ballot by mail, then go to the election office during the advance voting period and tell the election officer the ballot was lost, not received or destroyed. The law allowed the person to vote a replacement advance ballot in the election office. Acting under a different law, K.S.A. 25-2908(c), the voter could then go to the precinct on Election Day, surrender the mailed advance ballot, and vote a regular ballot.

Under the old law neither the replacement advance ballot nor the ballot at the polling place was required to be a provisional ballot, so they would be commingled with other ballots and irretrievable. The double vote would have been prosecutable but not preventable under the old law.

SB 102 closed this loophole by requiring that any such replacement advance ballots cast in the election office and the ballots cast at the polling place upon surrendering the mailed advance ballot be provisional. Provisional ballots are not counted on election night, so the situation can be researched after the election and only one ballot counted in the final tally.

b. Counting partial provisional ballots:

SB 102 requires the counting of partial provisional ballots if a voter casts a ballot in the wrong precinct as long as it is in the same county. This may occur through poll worker error or voter error.

The new law requires the canvassers to count those races on the provisional ballot that are common to both precincts in question. This change is consistent with other existing laws and recent court decisions that require canvassers to interpret

voter intent and count ballots whenever a vote is cast in a race in which the voter is entitled to vote.

c. Political party names:

This bill deletes language in KSA 25-304 that limits political parties' names to two words. This arises from a 2002 court case, *Natural Law Party of Kansas and Nancy Brune vs. Thornburgh*, filed by the Natural Law Party and the American Civil Liberties Union against the secretary of state.

The bill also allows the secretary of state, as the officer with whom party recognition petitions are filed, to make a determination that the name of the party proposed by the petitioners is not unreasonably lengthy or similar to that of an existing recognized party.

d. Presidential preference primary:

This bill cancels the 2004 Kansas presidential preference primary. It leaves the laws on the books requiring the PPP in 2008 and every four years thereafter.

e. City annexations:

This bill changes the date before an election by which city annexations must be completed in order to be effective for that election. The old law said that annexations completed and published by 30 days before the election were effective for that election; the new law changes the deadline to 60 days.

Senate Bill 103—Recall

SB 103 was proposed by the SOS to improve the process for recalling elected officials. It has four major provisions.

a. It amends the grounds for recall in KSA 25-4302 by: (a) defining "misconduct in office," (b) removing "incompetence," and (3) adding a definition of "mental impairment" to the ouster statute in KSA 60-1205.

The old law spelled out four grounds for recall: (1) conviction of a felony, (2) misconduct in office, (3) incompetence, and (4) failure to perform duties prescribed by law. SB 103 removes "incompetence" and replaces it with "mental impairment" but moves it to the ouster statute (KSA 60-1205), so the grounds for ouster now state that a public official can be removed from office for, among other things, demonstrating mental impairment "such that the person lacks the capacity to manage the office held."

Also, the term "misconduct in office" in the recall statute is defined as "a violation of law by the officer that impacts the officer's ability to perform the official duties of the office."

b. It clarifies which election is used to calculate the number of signatures required on a recall petition. In recent years confusion has arisen when determining which election to use to calculate the number of signatures required on a recall peti-

tion, particularly when the officer sought to be recalled is a city council member or school board member and more than one member of the governing body are elected at the same time.

The old laws stated that the recall petition must contain signatures equal to “40% of the votes cast for all candidates for the office of the officer sought to be recalled in the last general election at which a person was elected to such office.” The new language reads: “40% of the votes cast for all candidates for the office of the officer sought to be recalled, such percentage to be based upon the last general election for the current term of office of the local officer sought to be recalled.”

This means that the number of signatures required on the petition is calculated using the last general election when *that person who is being recalled* was elected to the office.

c. It increases the authority of the secretary of state (at the state level) or the county/district attorney (at the local level) to review the grounds for recall as stated in the recall petition.

With SB 103, the SOS or the county/district attorney is now authorized by law to deny a recall petition if “the facts do not support the grounds for recall as stated in the petition.” The addition of the new language increases the authority of the person reviewing the petition because past court decisions have limited the petition review to little more than a checklist of the format requirements.

The increased authority provided in SB 103 will allow the SOS or county/district attorney to prevent frivolous recalls, keep the recall process moving forward, reduce the number of recall initiatives that go to court, and preserve the voters’ constitutional right to recall the officials they have elected to office.

d. It requires the county election officer to maintain a public access file of the grounds for recall and the statement in defense of the person being recalled, rather than having the statements posted at each polling place on the day of the recall election.

With the new provision, the county election officer will keep the statements of the grounds for recall and the statement filed by the person sought to be recalled on file in the county election office for public inspection rather than posting them at each polling place on Election Day.

This is intended to:

- equalize the treatment of all voters. Under the old law advance voters would not see the statements but voters at the polls would.

- remove campaign statements from polling places. Because the grounds for recall and the statements in defense of the person being recalled were written by the recall committee and the subject of the recall, there was no control over the content of the statements. They are political statements intended to influence petition signers and voters, and in that regard they are often biased. Removing them from the polling places means there will be no biased political campaign statements at the

polls. Voters can view the statements or obtain copies at the election office, and the statements can be incorporated into campaigns for or against the recall of the official, but they will not be posted at the polling places.

- ease the administrative duty of the county election officer to reproduce copies of the statements and post them at each polling place.

House Bill 2214—Special Write-In Boards

HB 2214 was proposed by the Kansas County Clerks and Election Officials Association’s Elections Committee. The bill provides a procedure for ascertaining write-in vote totals if the election board conducting the original canvass failed to tally and/or report write-in votes.

This legislation authorizes the county election officer to appoint a special bi-partisan election board to unseal ballots, count the write-in votes, and reseal the ballots. The results are to be reported to the county election officer for inclusion in the election results to be presented to the county board of canvassers.

This law authorizes special boards only for the purpose of counting write-in votes. The boards are not authorized to perform other functions.

Other Bills of Interest to Election Officers

SB 205 — Referred to as the Kansas commemorative coin design concept act, this bill creates a procedure for the design of Kansas’ commemorative coin to be submitted to the U.S. Mint. The coins will be minted as part of the national series of state commemorative quarters. The bill establishes a commission to develop the five designs, and the secretary of state coordinates with the state board of education to submit the designs to all high school students in the state. The students will vote on the design to be submitted to the governor, who then submits it to the U.S. department of the treasury.

HB 2179 — This bill repeals KSA 25-1904, which prohibited officers or employees of the state, school districts or community colleges from being members of the state board of education.

Constitutional Amendments

There were no concurrent resolutions passed in 2003 creating statewide elections on constitutional amendments in 2004.

Note on HAVA

One of the most significant pieces of elections legislation this year was HB 2288, which was designed to bring state laws into compliance with many aspects of HAVA. The bill was passed by both houses but vetoed by the governor, and an attempt to override the veto in the House failed. Similar legislation will be proposed next year.

HAVA

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RFP process to span approximately one year.

The RFP will be developed with assistance from the central voter registration work group. The following individuals are members of the work group: Bryan Caskey (SOS), Mike Stewart (Chief Information Officer, SOS), Sheila Walker (Director, Division of Motor Vehicles), Tim Blevins (Chief Information Technology Officer, Department of Revenue), Denise Moore (Director, Division of Information Services), Rebecca Bossemeyer (Geary County Clerk), Kathy Peckman (Miami County Clerk), Don Merriman (Saline County Clerk), Elizabeth Ensley (Shawnee County Election Commissioner), Michelle Garrett (Morris County Clerk), Connie Schmidt (Johnson County Election Commis-

sioner), Rich Vargo (Riley County Clerk), Mary Brown (Clay County Clerk), and John Debes (Information Technology, Barton County). This group met for the first time on Thursday, May 29.

Kansas Election Reform Advisory Council / State Plan

The advisory council met for the final time this year on Thursday, May 29 in Topeka. Members had an opportunity to review the latest draft of the state plan. The state plan will be available for public review on June 12, 2003; it will be posted on the Secretary of State's Web site. A public hearing will be held on June 27, 2003, and public comments on the draft will be heard. The Secretary of State's office will consider recommendations made and file a final draft with the new Election Assistance Commission in July.

VNS

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With the dissolution of VNS, the organizations involved in the creation of VNS formed a new consortium called the National Elections Pool. This pool will rely on the Associated Press to gather election results on election night. The Associated Press has tabulated election night results for many years, independently of VNS. Our office, with the help of the county election officers, has pro-

vided results on election night to the Associated Press for over 20 years. This partnership will continue and these results will be the ones that are used by national press organizations in their election night coverage.

In addition, the National Elections Pool will contract with Mitofsky International and Edison Media Research to build a new exit polling system. This system will be in place for the 2004 elections, but will not be used in Kansas.

Congratulations Pat Schippers

On March 6th, Pat Schippers, Logan county clerk, gave birth to a baby girl, Allison Rose Schippers. Allison was 20 inches long and weighed eight pounds, one ounce at birth. All reports are that mother and daughter are doing fantastic, and that mom and dad are really enjoying her! We happily welcome aboard a new potential board worker in 16 years!

Sherry Kruse Replaces Alma Walker

On May 1, 2003, Sherry Kruse took office as the new Pratt county clerk. She replaces Alma Walker, who has retired to get her life back! Sherry has worked in the clerk's office since 1981. Previous to being appointed clerk, Sherry worked on doing payroll and accounts payable in the office.

She and her husband Darrell, have one daughter, Sara, who is graduating from high school next year. In her spare time, Sherry likes to read, and has a hard time keeping up with everything her daughter is involved in! Good luck and welcome Sherry!